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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,241	04/03/2001	Mark A. Hughes	922-128	8894

23117 7590 04/26/2005  
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EXAMINER

LY, ANH VU H

ART UNIT PAPER NUMBER

2667

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/824,241	Applicant(s) HUGHES ET AL.	
	Examiner Anh-Vu H Ly	Art Unit 2667	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>December 03, 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

1. This communication is in response to applicant's amendment filed December 03, 2004.

Claims 1-8 are currently pending.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Nakamura et al (US Patent No. 6,553,031 B1). Hereinafter, referred to as Nakamura.

With respect to claims 1 and 4, Nakamura discloses (col. 13, lines 27-40 and Figs. 10 and 12) that the control information extractor circuit 16 may extract the seventh byte of TCP header in which the TCP code bit regions is located. If the 19<sup>th</sup> byte (seventh byte of TCP header) is found to be effective (determining whether the packet is a control packet), e.g., including the

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code bits of TCP, the establishment or disconnecting of the connection may be determined according to the logical OR of the check result of the SYS bit and FIN bit in the TCP code bit region. Nakamura discloses (col. 14, lines 46-49) that a status value "1" is set to an entry priority 154 because the connection establishment flag was detected from the leading packet. Herein, the assigned priority refers to the connection establishment flag (control packet), which is different from the priority of user data packets (assigning priority to control packet that is different to the priority of the data packets that they control).

With respect to claims 2 and 5, Nakamura discloses (col. 13, lines 27-40 and Figs. 10 and 12) that the control information extractor circuit 16 may extract the seventh byte of TCP header in which the TCP code bit regions is located. If the 19<sup>th</sup> byte (seventh byte of TCP header) is found to be effective, e.g., including the code bits of TCP, the establishment or disconnecting of the connection may be determined according to the logical OR of the check result of the SYS bit and FIN bit in the TCP code bit region (checking the flag bits within the TCP header and establishing if any flag other than the PSH flag bit is set).

With respect to claims 3, 6, and 8, Nakamura discloses (col. 13, lines 6-8) that the fifth bit and sixth bit of the code bit region are sued as a synchronous (SYS) bit and a transfer finish (FIN) bit (in which packets having a flag bit other than PSH set are assigned an increase priority relative to those the PSH flag bit set).

With respect to claim 7, Nakamura discloses in Fig. 1, a switch comprises plurality of line interface boards (a multiplicity of ports for receiving and transmitting packets).

Nakamura discloses (col. 13, lines 27-40 and Figs. 10 and 12) that the control information extractor circuit 16 may extract the seventh byte of TCP header in which the TCP code bit regions is located. If the 19<sup>th</sup> byte (seventh byte of TCP header) is found to be effective (determining whether the packet is a control packet), e.g., including the code bits of TCP, the establishment or disconnecting of the connection may be determined according to the logical OR of the check result of the SYS bit and FIN bit in the TCP code bit region. Nakamura discloses (col. 14, lines 46-49) that a status value "1" (means for allocating a priority to packets within the switch) is set to an entry priority 154 because the connection establishment flag was detected from the leading packet. Herein, the assigned priority refers to the connection establishment flag (control packet), which is different from the priority of user data packets (assigning priority to control packet that is different to the priority of the data packets that they control).

### ***Response to Arguments***

3. Applicant's arguments filed December 03, 2004 have been fully considered but they are not persuasive.

Applicant argues on page 6 that Nakamura's allocation of priority is not to packets; it is to routing table entries to protect those entries against being over-written; Nakamura does not control, directly or indirectly, the allocation of priority to packets and Nakamura does not assign to control packets a priority different from that of the data packets that they control. Examiner respectfully disagrees.

Nakamura discloses (col. 14, lines 46-49) that a status value "1" is set to an entry priority 154 (assigning priority to control packets) because the connection establishment flag (any flag other than the PSH flag is set) was detected from the leading packet. The leading packet is considered as the control packet. Herein, a priority is set once it is determined that the received packet is the control packet. Further, as recited, considered, and interpreted by the examiner, in lines 3-5 of independent claim 1, a priority is assigned if the packet is a control packet. Applicant probably misunderstood on how the claims were interpreted by the examiner during the prosecution.

#### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anh-Vu H Ly whose telephone number is 571-272-3175. The examiner can normally be reached on Monday-Friday 7:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

avl

  
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